

CHASAN LAMPARELLO MALLON & CAPPUZZO, PC
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Attorneys for Defendant Neversink Media Group, LLC
File No. 15295-8909

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

BYRON SMITH,

Plaintiff,

vs.

NEVER SINK MEDIA LLC,

Defendants.

Case No. 1:18-cv-04292-PKC-CLP

Civil Action

**AFFIDAVIT TO BE RELIEVED AS
COUNSEL
PURSUANT TO LOCAL CIVIL RULE 1.4**

Mitchell L. Pascual, under penalty of perjury, declares as follows:

1. I have been admitted to practice before this Court, am admitted to the Bar of the State of New York, and am a member of the firm of Chasan Lamparello, Mallon & Cappuzzo, PC, counsel for Defendant Never Sink Media LLC. I am fully familiar with the facts stated herein and make this affidavit in support of Chasan Lamparello, Mallon & Cappuzzo, PC's Motion to withdraw as counsel for Never Sink Media LLC (hereinafter "Never Sink" or "Defendant").

2. Chasan Lamparello, Mallon & Cappuzzo, PC filed a Notice of Appearance and a Letter-Motion to Extend Time to Answer on November 10, 2018. (See ECF Documents 8 & 9)

3. By text Order entered December 3, 2018, the Court granted the Motion to Extend Time to Answer and Ordered that the Answer be filed by December 14, 2018.

4. Chasan Lamparello, Mallon & Cappuzzo, PC filed an Answer on behalf of Defendant on December 14, 2018. (See ECF Document 11)

5. This matter came to our firm via a former partner (Michael Witt, Esq.) here that had knowledge of and practiced in the area of intellectual property. More importantly, Mr. Witt has a familial relationship with the principal of Never Sink and intended to personally assist Never Sink in defending the matter. Unfortunately, Mr. Witt left our firm in January 2019 to work in the public law sector.

6. After the departure of Mr. Witt, Never Sink advised us that it was without any means to pay any legal fees to our firm for handling of this matter. Despite having not received any payment for legal services thus far rendered to Never Sink, the firm will not assert any file lien or seek any payment from Never Sink.

7. Never Sink has consented to our withdrawal by signing the stipulation of dismissal filed with the Court on February 19, 2019. (See ECF Document 14)

8. Rule 1.16(c) of the New York Rules of Professional Conduct state that a lawyer may withdraw from representing a client when (1) withdrawal can be accomplished without material adverse effect on the interests of the client; or (11) the client knowingly and freely assents to termination of the employment.

9. No prejudice to plaintiff should result from the withdraw of Chasan Lamparello, Mallon & Cappuzzo, PC . The matter is in its early stages of discovery and no dispositive motions have been made.

10. By knowingly and freely consenting to our withdrawal, Defendant has recognized that it will not be prejudiced.

11. Wherefore Chasan Lamparello, Mallon & Cappuzzo, PC respectfully request that the Court issue an order granting it leave to withdraw as counsel of record for Defendant and for other further relief as the Court deems just and equitable.

I certify that all of the foregoing statements made by me are true. I am aware that if any of the foregoing statement smade by me are willfully false, I am subject to punishment.

Dated: February 25, 2019

/s/ Mitchell L. Pascual
Mitchell L. Pascual